

ISSUE DATE: November 12, 1999

DOCKET NO. P-414, 416, 421/CP-97-44

ORDER MODIFYING MAY 19, 1999 ORDER AND REQUIRING COST STUDIES AND
PROPOSED RATES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
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Marshall Johnson
LeRoy Koppendrayner
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition for Extended Area
Service from the Nicollet Exchange to The
Exchanges of Mankato, St. Peter, and Cambria

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PROCEDURAL HISTORY

On January 10, 1997, telephone customers in the Nicollet exchange filed a petition for Extended Area Service (EAS) to the exchanges of Mankato, St. Peter, and Cambria. Nicollet and St. Peter are served by U S West Communications, Inc. (USWC); Mankato Citizen's Telephone Company serves the Mankato exchange; Mid-Communications, Inc (Mid-Comm) serves the Cambria exchange.

On August 22, 1997, the Commission issued its ORDER REQUIRING COST STUDIES AND PROPOSED RATES. The Commission ordered the affected companies to file cost studies on four different possible EAS routes: Nicollet to Mankato, Nicollet to the Mankato/St. Peter local calling area, Nicollet to the Mankato/Cambria local calling area, and from Nicollet to the Mankato/St. Peter/Cambria local calling area.

On May 22, 1998, the petition sponsor filed comments requesting that the Commission's ballot present only two route options (Nicollet to Mankato and Nicollet to Mankato/St. Peter/Cambria) and indicate that the prices listed do not include their current rate with USWC. The petition sponsor also requested in-put into the composition of the ballot before it was finally printed.

On May 19, 1999, the Commission issued its ORDER ACCEPTING COST STUDIES AND ESTABLISHING RATES FOR POLLING. As requested by the petition sponsor, the Commission ordered that customers in the Nicollet exchange be balloted on two routes: Nicollet to Mankato and Nicollet to Mankato/St. Peter/Cambria. Both exchanges were ordered to be balloted at a 60/40 rate allocation.

On June 2, 1999, the petition sponsor filed a PETITION FOR RECONSIDERATION AND REARGUMENT, asking that the Commission reconsider its May 19 order, which stated that USWC would conduct a poll of U S West customers in the Nicollet exchange. The petitioner informed the Commission that at this time over half of the telephone subscribers in the Nicollet exchange transferred phone companies, now obtaining telephone service from a competing local exchange company (CLEC), Crystal Communications (Crystal). The petitioner stated that the customers switched service to Crystal to take advantage of their offer for toll-free, one way calling to Mankato and St. Peter and requested that all telephone subscribers who were U S West customers upon filing of the initial petition should be able to vote on the issue of EAS.

From June 8 to June 18, Crystal, USWC, and the Minnesota Department of Commerce (the Department) filed reply comments to the Petition for Reconsideration and Reargument.

The Commission met on October 21, 1999 to consider this matter.

FINDINGS AND CONCLUSIONS

I. PRELIMINARY MATTERS

The Commission finds that standards for granting a variance are met with respect to the Department's late-filed answer to the petition for reconsideration. See Minn. Rules, Part 7829.3200. Since no prejudice to any party has been alleged or found due to the lateness of the filing and since the Commission benefits from the analysis of the Department, the Commission finds that strictly enforcing the 10-day deadline for receipt of answers would impose an excessive burden on those affected and granting the variance would not adversely affect the public interest. Lastly, granting the variance conflicts with no standard imposed by law.

The Commission will grant the Department a variance to the ten-day deadline for filing answers to petitions for reconsideration, thereby allowing the Department's late-filed answer into the record.

In addition, the comments timely filed by Crystal in response to the petition for reconsideration will be accepted and considered. Although Crystal was not a party when this matter was initiated, its non-participation at the at time is understandable since it did not have a certificate of authority to provide telephone service in the Nicollet exchange at that time. During the intervening period, Crystal has obtained such a certificate and has become the provider of local telephone service for approximately 90 percent of Nicollet customers.

II. THE PETITION FOR RECONSIDERATION

The petitioner sought reconsideration of one issue contained in the Commission's May 19, 1999 Order: the directive to poll USWC subscribers in the Nicollet exchange. The petitioner noted that subsequent to the submission Nicollet's petition for EAS approximately 90 percent of Nicollet subscribers have switched their service to Crystal, which offers toll-free calling to Mankato and

St. Peter. The petitioner objected that USWC subscribers (now only 10 percent of Nicollet subscribers) should not be the only ones allowed to vote on the Nicollet EAS petition.

The petitioner requested that the Commission authorize a vote of all citizens who were USWC customers at the time the petition was filed (January 10, 1997) or, in the alternative, all Nicollet citizens who signed the EAS petition in January 1997.

III. CRYSTAL'S COMMENTS

Crystal stated that it was unclear from the May 19, 1999 Order whether only USWC customers are to be polled or all Nicollet telephone subscribers are to be polled. Crystal noted that this potential point of uncertainty is not only significant because the Commission may be unsure of whom to poll, but the potential results of an ultimate "yes" vote are obscured.

Crystal recommended that their Nicollet customers be polled because not taking the opinions of Crystal customers via balloting could result in multiple adverse effects if EAS is installed, including network re-designs and potential future undesired rate hikes.

Specifically, Crystal requested that the Commission 1) specify which customers are to be polled; 2) allow Crystal to be involved in the development of materials sent to subscribers if the Commission decides to poll all Nicollet customers; and 3) if Crystal is forced to install its own facilities to accommodate EAS, rather than use USWC's facilities, request new cost studies from USWC.

IV. USWC's COMMENTS

USWC stated that the Commission's Order is not unclear, as asserted by Crystal, as to who will be allowed to vote. USWC noted that since it is generally Commission practice to request a customer list current as of the date near the expected poll date, it is clear that the Commission's Order indicates a polling list consisting of current USWC customers.

USWC also asserted that the Commission's decision to limit the voting to USWC customers was appropriate. USWC argued that the customer shift to Crystal may be an implied vote, with those shifting to Crystal likely to be those who desired EAS and those staying with USWC likely not to desire EAS. USWC reasoned that if this is true, including Crystal customers in the poll might result in passing on undesired EAS rate additives to current USWC customers.

V. THE DEPARTMENT'S COMMENTS

The Department stated that Crystal customers should be granted the right to vote in this matter because they could be so highly affected by the proposed EAS. The Department claimed that if EAS is passed (whether or not Crystal can vote on or receive the EAS being discussed), calls from St. Peter and Mankato are likely to increase since they will be able to call the entire Nicollet exchange toll-free. This would result in greater costs for Crystal, which would inevitably result in rate increases. In addition, the Department noted that Minnesota Rules, Part 7812.08000 states that competitive LECs must offer at least one flat rate calling area that matches the incumbent LEC's, including any EAS, so that if EAS is passed, Crystal will be affected.

VI. THE COMMISSION'S ANALYSIS AND ACTION

Significant changes in the petitioning exchange (Nicollet) relevant to this petition have occurred since this matter was initiated on January 10, 1997. Beginning in July 1998, Crystal began offering toll-free calling from Nicollet to Mankato and St. Peter. Substantial numbers of Nicollet subscribers responded to Crystal's offering and switched their service from USWC to Crystal. At this time a high percentage of Nicollet subscribers are customers of Crystal.

Prior to receipt of the petition for reconsideration of the May 19, 1999 Order, however, no information regarding the changed subscribership in the Nicollet exchange was brought to the Commission's attention and the sole provider of local service to Nicollet subscribers known to the record was USWC. As a consequence, the May 19, 1999 Order treated USWC as the sole affected telephone company with respect to Nicollet, approving cost studies, establishing EAS rates, and authorizing voting procedures accordingly.

The new information provided in the Petition for Reconsideration and confirmed by subsequent filings by other parties changes the picture substantially and warrants adjustments to the Commission's May 19, 1999 Order in all three areas: cost studies, EAS rates, and voting procedures.

Cost studies: the cost studies regarding installation of EAS in Nicollet that are currently on file and approved by the Commission in its May 19, 1999 Order were filed by USWC in February 1998 when it was the sole provider of local service in Nicollet and, hence served all subscribers. They need to be updated to reflect current realities. Moreover, Crystal is now a de facto affected telephone company that will incur costs in connection with the provision of the requested EAS routes. Therefore, Crystal will be required to provide a cost study reflecting such costs.

EAS rates: EAS rates approved for Nicollet subscribers (all presumed to be USWC customers) in the May 19, 1999 Order were calculated using a much larger base of Nicollet subscribers than USWC currently serves. These rates must be adjusted to reflect the smaller base of customers that will have to bear USWC's revenue requirement. In addition, EAS additives must be adopted for Crystal. The Company will be required to file proposed rates for Commission approval.

Voting Procedures: EAS routes are requested on an exchange to exchange basis, and are not necessarily company-specific. This clarification has important implications for who should be allowed to vote on whether the requested EAS should be implemented. This clarification has not been required in previous EAS petitions because heretofore all the subscribers in the petitioning exchanges were served by one local provider. Since there are now two companies serving subscribers in Nicollet, the question is squarely presented. The Commission does not agree, as USWC argued, that the only subscribers to be polled should be the subscribers who continue to be served by the company that served all the subscribers when the petition was filed. Instead, the Commission believes that all subscribers in the Nicollet exchange are entitled to vote on whether the proposed EAS routes should be implemented.

The Commission clarifies that balloting the subscribers of both companies should occur simultaneously and should be conducted using ballots that identify the telephone company whose subscriber is returning the ballot so that results can be tabulated on a company-specific basis as well as on an overall exchange basis. The further question of how the Commission should proceed if company-specific polling results differ from exchange-wide results will not be determined at this time and will be addressed when and if that circumstance arises.

Upon receipt and review of the Companies' cost studies, proposed rates, and proposed ballots and balloting procedure, the Commission will review the Companies' filings, establish rates, and authorize polling.

ORDER

1. The Commission's May 19, 1999 Order in this matter is modified as follows:
 - a. the cost studies approved and rates approved in the May 19, 1999 Order are suspended;
 - b. the Department shall coordinate (on an expedited basis) the efforts of USWC, Mankato Citizens Telephone Company, and Mid-Communications, Inc. (the Companies) in producing updated cost studies based on current figures, proposed rates reflecting those costs, and proposed ballot design and procedure which shall include the following fixed points:
 1. both Crystal and USWC's subscribers should be balloted;

2. the balloting should occur simultaneously; and
 3. the ballots should present the costs for each company and assure the identification of the telephone company serving the voting subscriber (e.g. by using a different color ballot for each company) so that results can be tabulated on a company-specific basis as well as on an overall exchange basis.
- c. No later than 60 days of this Order, the Companies shall file with the Commission for approval their cost studies, proposed rates, and proposed ballots and balloting procedure. Filing before the 60 day deadline, to the extent that it does not compromise quality and accuracy, is encouraged.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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